

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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No. 06-10985  
Non-Argument Calendar

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| FILED<br>U.S. COURT OF APPEALS<br>ELEVENTH CIRCUIT<br>MAY 25, 2006<br>THOMAS K. KAHN<br>CLERK |
|---|

D. C. Docket No. 04-01654-CV-CC-1

THOMAS H. LUPO,

Plaintiff-Appellant,

versus

NORFOLK SOUTHERN CORPORATION,

Defendant-Appellee,

WILLIAM SIRMANS,

Defendant.

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Appeal from the United States District Court  
for the Northern District of Georgia

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**(May 25, 2006)**

Before TJOFLAT, CARNES and PRYOR, Circuit Judges.

PER CURIAM:

The sole question this appeal presents is whether triable issues of fact exist regarding the ownership/control of the railroad crossing where appellant was injured. The answer to the question is no, for the reasons stated in the district court's January 5, 2006 granting appellee summary judgment.

**AFFIRMED.**